

Robert F. Hochwarth
General Attorney

RECEIVED

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MAR 24 1977

I.C.C.
FEE OPERATION BR.

 **Chessie System**

Law Department
Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
~~216-861-2200~~
216-623-2405
March 21, 1977

REGISTERED MAIL
Return Receipt Requested

RECORDATION NO. *8706-A*

Filed & Recorded

MAR 24 1977 -4 00 PM

Secretary
Interstate Commerce Commission
12th Street and Constitution Ave. N.W.
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

No. *7-083A153*

Date *3/24/77*

Fee \$ *10-02 40.00*

Re: Baltimore and Ohio Railroad
Equipment Trust of 1977

ICC Washington, D. C.

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations, I enclose for filing and recording counterparts nos. 1 through 7 of a Sublease of Railroad Equipment dated as of February 1, 1977, between The Baltimore and Ohio Railroad Company and Western Maryland Railway Company.

The names and addresses of the parties to the transaction are:

Sublessor - The Baltimore and Ohio Railroad Company
2 North Charles Street
Baltimore, Maryland 21201

Sublessee - Western Maryland Railway Company
2 North Charles Street
Baltimore, Maryland 21201

The equipment covered by the enclosed document consists of 4 3000 HP Model GP 40-2 diesel electric locomotives, to bear Sublessee's road numbers 4257 - 4260, inclusive, AAR Mechanical Designation BB. The equipment will be lettered "WM", "Western Maryland", "Chessie", "Chessie System", or in some other appropriate manner, and will also be marked "BALTIMORE AND OHIO RAILROAD EQUIPMENT TRUST OF 1977, FIRST PENNSYLVANIA BANK N.A., TRUSTEE, OWNER, LESSOR."

Also enclosed is a draft for \$10 representing the recordation fee.

The Commission previously recorded an Equipment Trust Agreement dated as of February 1, 1977, between First Pennsylvania Bank N.A., Trustee,



-2-

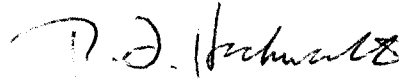
Secretary
Interstate Commerce Commission
Washington, D.C.

March 21, 1977

and The Baltimore and Ohio Railroad Company covering the above equipment.
The said Equipment Trust Agreement was recorded with the Commission on
March 15, 1977, at 11:30 a.m., under Recordation No. 8746.

Please return 5 recorded counterparts to the undersigned.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. F. Hochwarth", with a stylized flourish at the end.

R. F. Hochwarth
General Attorney

RFH:ef
Encls.

Interstate Commerce Commission
Washington, D.C. 20423

3/31/77

OFFICE OF THE SECRETARY

Robert F. Hochwarth, Gen. Atty.

Chessie System

Law Dept, Terminal Tower

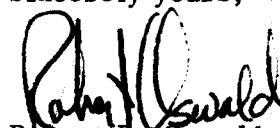
P.O.Box 6419

Cleveland, Ohio 44101

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **3/24/77** at **4:00pm**
and assigned recordation number(s) **8746-A**

Sincerely yours,



Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

EXECUTED IN 2 COUNTERPARTS
OF WHICH THIS IS NO. 2

RECORDATION NO. 8746-A Filed & Recorded

SUBLEASE OF RAILROAD EQUIPMENT

MAR 24 1977 -4 00 PM

INTERSTATE COMMERCE COMMISSION

Dated as of February 1, 1977

Between

THE BALTIMORE AND OHIO RAILROAD COMPANY

and

WESTERN MARYLAND RAILWAY COMPANY

Covering

4 3000 HP Model GP 40-2

Diesel Electric Locomotives

SUBLEASE OF RAILROAD EQUIPMENT dated as of February 1, 1977, by and between THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation (hereinafter called Lessor), and WESTERN MARYLAND RAILWAY COMPANY, a Maryland and Pennsylvania corporation (hereinafter called Lessee):

WHEREAS, Lessor has contracted to purchase, under a certain Manufacturing Agreement dated as of February 1, 1977 (hereinafter called the Manufacturing Agreement), a copy of which has been delivered to Lessee, with General Motors Corporation (Electro-Motive Division), as Seller, four (4) 3000 HP Model GP 40-2 diesel electric locomotive units; and

WHEREAS, Lessor has arranged to finance the purchase of said locomotive units pursuant to a certain Equipment Trust Agreement dated as of February 1, 1977 (hereinafter called the Equipment Trust Agreement) between First Pennsylvania Bank N.A., as Trustee (hereinafter called the Trustee), a copy of which has been delivered to Lessee; and

WHEREAS, Lessor desires to sublease said locomotive units to Lessee and Lessee desires to hire the same from Lessor (such of said locomotive units as shall become and from time to time remain subject to this Sublease being hereinafter collectively called the Equipment and each called a Unit);

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Lessor hereby subleases the Equipment unto Lessee, and Lessee hereby hires the Equipment from Lessor, for the term and at the rentals and subject to the other terms and provisions herein set forth, but subject to all the terms, covenants, and provisions of the Equipment Trust Agreement and all the rights and remedies of the Trustee thereunder.

2. The Equipment, when delivered to and accepted by Lessee for the purposes of this Sublease, shall comply with the requirements of the Manufacturing Agreement as to construction and condition, and shall bear Lessee's identifying numbers 4257 to 4260, both inclusive, and shall be plainly, distinctly, permanently, and conspicuously marked by stencil or otherwise on each side of each Unit, in letters not less than one inch in height:

"BALTIMORE AND OHIO RAILROAD EQUIPMENT TRUST OF 1977,
FIRST PENNSYLVANIA BANK N.A., TRUSTEE, OWNER, LESSOR"

Lessor will deliver the Equipment to Lessee at such point or points within the United States of America as may be agreed upon by the Lessor and the Lessee, as promptly as may be after the execution and delivery of this Sublease. When the Equipment is delivered at the agreed places of delivery, a duly authorized representative of Lessee shall inspect the same and, if it conforms to the requirements of this Sublease, shall deliver to Lessor one or more Certificates of Acceptance in such form as Lessor may reasonably require, and such Certificates of Acceptance shall constitute conclusive evidence that the Equipment has been delivered to and accepted by Lessee in accordance with the provisions of this Sublease.

3. Lessor makes no warranty or representation, either express or implied, as to the fitness, design, or condition of, or as to the quality of the material, equipment, or workmanship in, the Equipment, or as to any patented features thereof or as to Lessor's property therein, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee. Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney-in-fact, for and in its name and behalf, to make and enforce, from time to time during the continuance of this Sublease and to the extent of Lessee's interest hereunder, whatever claim or claims Lessor may have against the Seller of the Equipment.

4. The term of this Sublease with respect to each Unit shall commence on the date of its delivery to and acceptance by Lessee hereunder, and shall expire at midnight January 31, 1992.

5. As advance rental for the Equipment, Lessee shall pay to Lessor in cash on or before April 1, 1977 an amount equal to 20% of Lessor's purchase price for the Equipment pursuant to the Manufacturing Agreement. In addition to such advance rental, Lessee shall pay to Lessor as rental for the Equipment (a) fifteen annual payments, on February 1, 1978 through February 1, 1992, inclusive, each amounting to one-fifteenth of 80% of Lessor's purchase price for the Equipment pursuant to the Manufacturing Agreement, and (b) thirty semiannual payments, on February 1 and August 1 in each year commencing August 1, 1977, in amounts equal to interest at the rate of 8-1/4% per annum on 80% of Lessor's purchase price for the Equipment pursuant to the Manufacturing Agreement, reduced in each case as though the amounts payable in clause (a) of this Section 5 were installment payments on an outstanding debt from Lessee to Lessor.

As promptly as feasible, Lessor will prepare and submit to Lessee for approval a rental payment schedule setting forth the Rental Base for the Equipment and the amounts of the rental payments required by this Section 5 and also showing the method of calculation of such rental payments.

At the termination of this Sublease and after all payments due or to become due from Lessee hereunder shall have been completed and fully made to Lessor, such payments shall be applied and treated as purchase money and as the full purchase price of the Equipment; title to the Equipment shall vest in Lessee; and Lessor shall execute for record in public offices, at the expense of Lessee, such instrument or instruments in writing as reasonably shall be requested by Lessee in order to make clear upon public records Lessee's title to the Equipment;

provided, however, that until that time title to the Equipment shall not pass to or vest in Lessee, but shall be and remain in the Trustee, notwithstanding the delivery of the Equipment to and the possession and use thereof by Lessee.

6. Lessee shall, during the continuance of this Sublease, in addition to the rentals herein provided, promptly pay all taxes, assessments, and other governmental charges imposed upon or in respect to the Equipment by reason of or in connection with Lessee's possession and use thereof under this Sublease, provided that Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of Lessor, the rights or interests of Lessor will be materially endangered.

7. At all times during the continuance of this Sublease, Lessee will cause all the Units to bear the identifying numbers originally assigned to them as set out in Section 2 hereof (unless changed, with the consent of Lessor and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with Lessor by Lessee and filed, recorded, or deposited in all public offices where this Sublease shall have been filed, recorded, or deposited). If during the continuance of this Sublease the legend referred to in Section 2 hereof shall at any time be removed, defaced, or destroyed on any Unit, Lessee will immediately cause such legend to be restored or replaced. Lessee will not allow the name of any person, association, or corporation to be placed on any of the Equipment as a designation which might be interpreted as indicating a claim of ownership thereof or interest therein by any person, association, or corporation other than the Trustee or Lessor, but Lessee may letter the Equipment with its name or initials or other appropriate insignia for convenience of identification of its leasehold interest under this Sublease.

8. During the continuance of this Sublease, Lessee, so long as it shall not be in default hereunder, shall be entitled to possession of the Equipment and the use thereof on lines of railroad owned or operated by it, or over which it has trackage rights or rights for operation of its trains.

9. Lessee agrees to indemnify and save harmless Lessor against any charge or claim against Lessor, and against any expense or liability which Lessor may incur, in any manner arising out of or as a result of the use or operation of the Equipment or any Unit thereof.

10. Lessee shall comply with all laws and regulations of any state or governmental authority respecting the manner of using the Equipment, or any Unit thereof, during the continuance of this Sublease. Lessee shall have the right, without cost or expense to Lessor, to make any replacement, change, substitution, or addition of any device or appliance on any Unit, but any parts installed or replacements made by Lessee upon any Unit shall be considered as accessions thereto.

11. Subject to the provisions of Section 13 hereof, prior to termination of this Sublease, Lessee shall not, by virtue of this Sublease or the possession and use of the Equipment by Lessee under or pursuant to this Sublease or of anything permitted to be done by Lessee hereunder in respect of the Equipment, acquire title to or any property interest in the Equipment or any Unit thereof.

12. This Sublease shall continue in full force and effect irrespective of damage to any of the Equipment (subject, however, to the provisions of Section 13 hereof); and Lessee agrees that during the continuance of this Sublease it will, at its own cost and expense, maintain and keep the Equipment in as good order and repair as when delivered to it under this Sublease, ordinary wear and tear excepted.

13. In the event that (a) any Unit shall be or become worn out, lost, destroyed, or, in the opinion of Lessee, damaged or destroyed beyond economical repair, or obsolete, or (b) compliance with any law or regulations referred to in Section 10 hereof would require the change, or replacement, or addition of any device or appliance, of or on any Unit, and, in the opinion of Lessee, compliance therewith would be uneconomical (such occurrences being hereafter called Casualty Occurrences), then, in any such event, Lessee shall, promptly after it has knowledge of such event, fully notify Lessor in regard thereto. Lessee, on the next succeeding rental payment date, shall pay to Lessor the Casualty Value of such Unit as of the date of such payment and shall file with Lessor a certificate of a Vice President, the Treasurer, or an Assistant Treasurer of Lessee setting forth the Casualty Value of such Unit.

If any money is paid to Lessor pursuant to the preceding paragraph of this Section 13, the rental for such Unit shall cease to accrue as of such rental payment date and Lessee shall be entitled to the salvage of such Unit.

The Casualty Value of each Unit shall be deemed to be Lessor's purchase price therefor pursuant to the Manufacturing Agreement, less one-twelfth of 5% of said cost for each full month during which the Unit was subject to this Sublease prior to the date at which the Casualty Value is so to be determined.

14. On or before October 25 in each year, commencing with the year 1978, Lessee will furnish to Lessor an accurate statement as of the preceding June 30 (a) showing the amount, description, and numbers of the Equipment then subject to this Sublease, the amount, description, and numbers of all Units that may have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding twelve (12) months (or since the date of delivery hereunder of each Unit, in the case of the first such statement), and such other information

regarding the condition and state of repair of the Equipment as Lessor may reasonably request, and (b) stating that, in the case of all Units repainted during the period covered by such statement, the markings required by Section 2 hereof have been preserved or replaced. Lessor shall have the right, by its agents, to inspect the Equipment and Lessee's records with respect thereto once in every year.

15. If, during the continuance of this Sublease, one or more of the following events shall occur:

(a) default shall be made in the payment of any part of the rental provided in Section 5 hereof and such default shall continue for fifteen (15) days;

(b) Lessee shall make or permit any unauthorized assignment or transfer of this Sublease or of possession of any Unit or Units, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Unit or Units within fifteen (15) days after written notice from Lessor to Lessee demanding such cancellation and recovery of possession;

(c) default shall be made in the observance or performance of any other of the covenants, conditions, and agreements on the part of Lessee contained herein and such default shall continue for thirty (30) days after written notice from Lessor specifying the default and demanding the same to be remedied; or

(d) a decree or order by a court having jurisdiction in the premises shall have been entered

(i) adjudging Lessee a bankrupt or insolvent, or

(ii) approving as properly filed a petition seeking reorganization

of Lessee under the Bankruptcy Act or any other State or Federal law relating to bankruptcy or insolvency, or

- (iii) for the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of Lessee or of its property or any substantial portion of its property, and within sixty (60) days thereafter (or in case, prior to the end of such 60-day period, a temporary or permanent receiver or trustee shall have been appointed in such proceedings, then within sixty (60) days after Lessor shall have demanded in writing that such receiver or trustee take action to assume or reject this Sublease) the obligations of Lessee under this Sublease shall not have been assumed by the receiver or trustee in such proceedings, pursuant to an order or decree of such court or otherwise, in such manner that they shall have been given a status comparable to that of those obligations incurred by a receiver or a trustee in bankruptcy or insolvency proceedings which cannot later be rejected by a plan of reorganization; then, in any such case, Lessor, at its option, may
- (1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Sublease or to recover damages for the breach thereof; or
 - (2) by notice in writing to Lessee terminate this Sublease, whereupon all rights of Lessee to the use of the Equipment shall absolutely cease and determine as though this

Sublease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Equipment may be and take possession of the Equipment or any Unit or Units thereof, and thenceforth hold, possess, and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Equipment for any purposes whatever; but Lessor shall, nevertheless, be entitled to recover from Lessee any and all amounts which under the terms of this Sublease may be then due or which may become due and unpaid, including rentals accruing hereunder after the date of default, for the use of the Equipment (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee (x) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit then subject to this Sublease, which represents the excess, if any, of the present worth, at the time of such termination, of all rentals for each such Unit which would otherwise have accrued hereunder during the period of this Sublease subsequent to the date of such termination

over the then present worth of the fair rental value of such Unit for such period, each of such present worths to be computed on the basis of an 8-1/4% per annum discount, compounded from the respective dates upon which rentals would have been payable hereunder had this Sublease not been terminated, and (y) any damages or expenses, including reasonable attorney's fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenant or covenants of this Sublease other than for the payment of rental.

The remedies in this Sublease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make the rental payments regardless of any offset or claim which may be asserted by Lessee or on its behalf in connection with the sublease of the Equipment, excepting, however, any such offset or claim arising out of action taken or suffered by Lessor, or anyone claiming through or under Lessor, after the date of this Sublease.

Failure of Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

16. Without the prior written consent of Lessor, Lessee shall not (a) assign,

transfer, or encumber its leasehold interest under this Sublease (except to the extent that the provisions of any mortgage now or hereafter created by Lessee may subject such leasehold to the lien thereof), or (b) loan, hypothecate, or otherwise transfer or dispose of any of the Equipment.

17. All rights of Lessor hereunder may be assigned, either in whole or in part, with or without notice to Lessee, but subject to Lessee's rights under this Sublease.

18. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, whether during the 15-day period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Sublease, shall result in the obligation on the part of Lessee to pay also an amount equal to 8-1/4% per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of the overdue rentals for the period of time during which they are overdue.

19. Promptly after the execution and delivery of this Sublease, Lessor shall at the expense of Lessee cause this Sublease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to the satisfaction of counsel for Lessor, of the Trustee's title to the Equipment and the leasehold interest of Lessor therein, or for the purpose of carrying out the intention of this Sublease. Lessee will pay all costs, charges, and expenses incident to the filing, re-filing, registering, re-registering, recording, and re-recording of any such instruments or incident to the taking of any such action.

20. Lessor covenants that Lessee shall lawfully, peaceably, and quietly hold, possess, and enjoy the Equipment covered by this Sublease, without any let, hindrance, dispossession, or interference by Lessor or anyone lawfully claiming by, through, or under Lessor, except pursuant to the provisions of this Sublease.

21. This Sublease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

22. The terms of this Sublease and the rights and obligations of the parties hereto hereunder may not be changed or terminated orally but only by an agreement in writing signed by the party against whom enforcement of such change or termination is sought.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Sublease of Railroad Equipment as of the date first above written.

THE BALTIMORE AND OHIO RAILROAD COMPANY

[Corporate Seal]

By

L.C. Light
Assistant Vice-President
and Treasurer

Attest:

Peterson J. Harady
Assistant Secretary

WESTERN MARYLAND RAILWAY COMPANY

[Corporate Seal]

By

L.C. Light
Assistant Vice-President
and Treasurer

Attest:

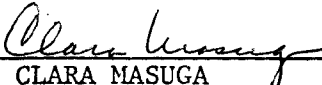
Peterson J. Harady
Assistant Secretary

7000-10-1
Legal Form
D 2 H

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 15TH day of March, 1977, before me personally appeared L. C. Roig, Jr., to me personally known, who being by me duly sworn says that he is Assistant Vice-President and Treasurer of THE BALTIMORE AND OHIO RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


[Notarial Seal]


CLARA MASUGA
Notary Public, Cuyahoga County, Ohio
My Commission Expires April 21, 1979

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 15TH day of March, 1977, before me personally appeared L. C. Roig, Jr., to me personally known, who being by me duly sworn says that he is Assistant Vice-President and Treasurer of WESTERN MARYLAND RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]


CLARA MASUGA
Notary Public, Cuyahoga County, Ohio
My Commission Expires April 21, 1979